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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/500,192	02/25/2005	Norihisa Hirota	TYOS123084	9236

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EXAMINER	
KASHNIKOW, ERIK	

ART UNIT	PAPER NUMBER
1794	

MAIL DATE	DELIVERY MODE
06/26/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/500,192	HIROTA ET AL.	
	Examiner	Art Unit	
	ERIK KASHNIKOW	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *03/18/2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1 and 2* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1 and 2* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *18 March 2008* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-2 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are rejected because the X-ray diffraction measurement is to be performed "near" a bottom center area. It is unclear and not sufficiently defined in the specification as to what is meant by "near".

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

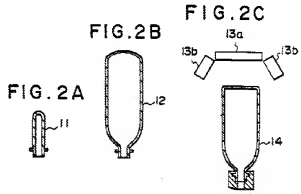
4. Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Collette et al. (US 5,520,877) in view of Nakamaki et al. (EP 0 683 029).

5. In regards to claim 2 Collette et al. teach a method for a biaxially orientated bottle shaped container (column 6 lines 13-16). Collette et al. teach an initial step of blow molding the preform to a size larger than the final product size (figure 9 and column 9 lines 53-58). Collete et al. then teach heat shrinking the intermediate product (figure 11

and column 10 lines 29-54). Collette et al. then perform a second step of blow molding to obtain the final project (column 10 lines 54-56).

6. While Collette et al. teach an article made by the method from which a biaxially oriented polyester container is formed through a process which comprises the steps of a primary and secondary blow molding, and a primary product larger than the final product they are silent with regards to the unrestrained bottom during the primary blow molding.

Nakamaki et al. also teach biaxially stretched blow molded containers (paragraph 0001).



7. Nakamaki et al. teach a process wherein the bottom state is not constrained during the primary blow molding step (Figures 2a-2f and paragraph 0061-0065).

8. One of ordinary skill in the art at the time of the invention would be motivated to modify the invention of Collette et al. with that of Nakamaki et al. because the method of Collette et al. which offers would benefit from the method of Nakamaki et al. which offers produces a one piece polyester bottle having a bottom with excellent mechanical strength (column 3 lines 23-25).

9. In regards to claim 1, while Collette et al. are silent regarding X-ray diffraction values and orientation parameter values, it would be inherent that an article made of the same material in the same way would have the same properties.

Response to Arguments

10. Applicant's arguments, see response, filed 03/08/2008, with respect to the double patenting have been fully considered and are persuasive. The rejection of claims 1 and 2 due to double patenting has been withdrawn.

11. Applicant's arguments, see response, filed 03/08/2008, with respect to the drawings have been fully considered and are persuasive. The objection of the drawings has been withdrawn.

12. In response to Applicant's arguments the rejection has been amended to include the Nakamaki reference which teaches an unrestrained bottom during the primary blow molding method. As such the materials and the process for making the bottle are the same and therefore the orientation parameter inherent. It is noted that applicants point to the comparative data in the present specification that compares process as presently claimed where the bottom part is not restrained with process where bottom part is restrained. It is shown that the presently claimed process produces container with superior drop strength, ESC resistance, and heat resistance. However, the data is unpersuasive given that Nakamaki already teaches the criticality of using process for forming a container wherein the bottom part is not restrained. Attention is drawn to Table 2 of Nakamaki which shows that container formed where the bottom is not restrained (C and D) is superior in terms of heat resistance and cracking resistance as compared to container formed from process where bottom is restrained (A and B).

Therefore, the comparative data is not persuasive given that Nakamaki already recognize the criticality of using the presently claimed process.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ERIK KASHNIKOW whose telephone number is (571)270-3475. The examiner can normally be reached on Monday-Friday 7:30-5:00PM EST (Second Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Callie Shosho can be reached on (571) 272-1123. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Erik Kashnikow
Examiner
Art Unit 1794

/Callie E. Shosho/
Supervisory Patent Examiner, Art Unit 1794